AMERICAN MILLS COMPANY *v.* AMERICAN SURETY COMPANY OF NEW YORK.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 118. Argued November 24, 1922.—Decided December 11, 1922.

1. In a suit to cancel a written guaranty for fraud, the defence that the plaintiff has an adequate remedy at law by defending actions brought by the defendant on the guaranty, is waived by the defendant where, without insisting upon it as he might, he introduces proof, under a counterclaim for the amount of the guaranty, putting the instrument in evidence. P. 363.
2. The provision of Equity Rule 30, that the answer must state any counterclaim arising out of the transaction which is the subject-matter of the suit, applies only to equitable, not to legal, claims. P. 363.

273 Fed. 67, affirmed.

CERTIORARI to a decree of the Circuit Court of Appeals, affirming a decree of the District Court which canceled a written guaranty for fraud.